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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

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MAY 24 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

GN Docket No. 94-90

In the Matter of)

)
Eligibility for the Specialized Mobile)
Radio Services and Radio Services in)
the 220-222 Mhz Land Mobile Band and)
Use of Radio Dispatch Communications)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

OPPOSITION OF MCCAW CELLULAR COMMUNICATIONS,
TO REQUEST FOR PARTIAL RECONSIDERATION
AND FOR CLARIFICATION

McCaw Cellular Communications, Inc. ("McCaw"),^{1/} hereby
opposes the request for partial reconsideration and for
clarification ("Petition") filed by the American Mobile
Telecommunications Association, Inc. ("AMTA")^{2/} in response to the
Report and Order in the above-captioned proceeding.^{3/}

INTRODUCTION AND SUMMARY

AMTA asks the Commission to reconsider its decision to
repeal the ban on common carriers engaging in dispatch services.
AMTA's Petition raises no new legal arguments or public policy
reasons that warrant reinstatement of the ban. Indeed, grant of
AMTA's request would frustrate the Commission's goal of enhancing

^{1/} On September 19, 1994, McCaw became a wholly-owned
subsidiary of AT&T Corp.

^{2/} See Request for Partial Reconsideration and for
Clarification of the American Mobile Telecommunications
Association, Inc., GN Docket No. 94-90 (filed April 24, 1995).

^{3/} Eligibility for the Specialized Mobile Radio Services
and Radio Services in the 220-222 Mhz Land Mobile Band and Use of
Radio Dispatch Communications, GN Docket No. 94-90, FCC 95-98
(released March 7, 1995).

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competition as well as Congress' mandate to achieve regulatory symmetry among comparable services.^{4/}

The Commission should also reject AMTA's request that the effective date for eliminating the ban be deferred until August 10, 1996, which is the transition period for private carriers that will be reclassified as commercial mobile service providers ("CMRS"). The Commission has determined that such a sunset provision is unnecessary to protect specialized mobile radio ("SMR") licensees.

Simply put, AMTA's request is nothing but an attempt to defer and limit competition. It's Petition should be denied.

I. THE COMMISSION SHOULD REJECT AMTA'S EFFORTS TO UNDERMINE THE COMMISSION GOALS OF INCREASING COMPETITION AND ACHIEVING REGULATORY PARITY FOR COMPARABLE MOBILE SERVICES

The Commission's Report and Order establishes a sound regulatory framework by eliminating a significant regulatory disparity among providers of mobile services. The Commission properly concluded that retention of the ban on common carrier provision of dispatch services was inconsistent with its goal of regulatory parity. Indeed, the record in the underlying proceeding amply demonstrated that "repeal of the dispatch ban will enhance competition and thereby provide consumers with expanded choice and lower prices."^{5/}

^{4/} Omnibus Budget Reconciliation Act of 1993 § 6002(b)(2)(A), (B).

^{5/} Report and Order at ¶ 29.

Predictably, AMTA seeks to reimpose the ban and thereby, maintain the competitive advantage that has benefitted the SMR industry. The Commission, however, clearly intended that cellular, personal communications services ("PCS"), reclassified private carriers and other CMRS providers compete with each other in the provision of dispatch services. As the Report and Order demonstrates, the Commission carefully considered the issues AMTA seeks to reopen, and properly concluded that "[p]ermitting all CMRS licensees to provide dispatch service ... is consistent with [its] efforts to achieve regulatory symmetry among comparable services."^{6/}

The Commission should stand by its conclusion that elimination of the dispatch ban will serve the objective of regulatory parity by allowing competitors to "offer the same portfolio of service options and packages."^{7/} Private carriers have long enjoyed the freedom from Federal (and state) regulatory impediments that have restricted common carriers, despite the fact that both types of carriers have offered substantially similar services.^{8/} In fact, enhanced SMR licensees have been offering cellular-like services for a number of years, while

^{6/} Id. at ¶ 34.

^{7/} Id.

^{8/} Indeed, private carriers remain free of common carrier obligations until August 10, 1996.

avoiding common carrier competition in dispatch services.^{9/} The Commission's decision to repeal the dispatch ban was a significant step in eliminating this regulatory imbalance.

AMTA's argument that excess spectrum not needed to provide cellular service should be reassigned and auctioned to the highest bidder also is misguided. Cellular carriers did not seek relief from the "dispatch" ban because of the existence of "excess" spectrum. In fact, the definition of "dispatch" inhibited development of innovative cellular products that arguably incorporated features akin to dispatch. Contrary to AMTA's contention, lifting the ban has removed an artificial barrier to cellular carriers' efficient and innovative use of scarce spectrum. The Commission acknowledged this result when it concluded that cellular carriers should "develop innovative uses for [its spectrum] that are responsive to consumer demand, including dispatch service."^{10/} Further, contrary to AMTA's

^{9/} For example, now that Craig McCaw has agreed to acquire up to 23.5 percent of Nextel Communications, Inc., one of the nation's largest enhanced SMR providers, the company intends to expand the range of its cellular-like services into data messaging and telephone calling options. J. J. Keller, McCaw to Buy Nextel Stake of Up to 23.5%, Wall St. J., April 6, 1995, at A3.

^{10/} Report and Order at ¶ 33. Previously, in 1994, the FCC took steps to allow more flexible use of the spectrum. In particular, it repealed Section 22.119 of its rules, which prohibited the joint licensing and use of transmitters in the common carrier and private carrier services. 47 C.F.R. § 22.119. The Commission agreed with commenters that elimination of the prohibition would promote economic efficiency by reducing the costs of constructing and operating private carrier paging facilities at locations where Part 22 transmitters with additional capacity exist. The FCC also noted that deleting
(continued...)

claims,^{11/} limiting dispatch service solely to SMR frequencies would be an inefficient use of spectrum. As the Commission recognized, limiting dispatch service to Part 90 frequencies would create an artificial scarcity of spectrum for dispatch service.^{12/}

AMTA has failed to refute the Commission's conclusion that the dispatch ban is outdated and that its repeal would promote competition.^{13/} There is simply no legitimate justification for barring cellular and PCS providers from providing services that are comparable to those offered by private carriers.

II. THE COMMISSION SHOULD REJECT AMTA'S REQUEST TO DEFER THE EFFECTIVE DATE OF THE REPEAL OF THE DISPATCH PROHIBITION

AMTA has proffered no valid legal or public policy reason to justify deferral of the effective date for lifting the ban.^{14/} Keeping the dispatch prohibition in place until August 10, 1996 would simply delay the introduction of new competition and the associated public benefits. It would also extend further the

^{10/} (...continued)

Section 22.119 would promote symmetrical regulatory treatment of competing service providers. Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, 9 FCC Rcd 6513, 6527 (1994). By encouraging creative uses of the spectrum, repeal of the dispatch ban will have similar public interest benefits.

^{11/} AMTA Petition at 4-5.

^{12/} Report and Order at ¶ 33.

^{13/} Id. at ¶ 6.

^{14/} AMTA Petition at 6-7.

unwarranted competitive advantage and substantial headstart currently enjoyed by SMR licensees in this area and further delay the incorporation of dispatch like features into innovative cellular offerings. This is not what the Commission or Congress intended.

Unlike private carriers that may require an opportunity to prepare for compliance with a new commercial regulatory structure, SMR licensees do not need a transition period to get ready for competition from cellular and PCS providers in the provision of dispatch service. Indeed, AMTA admits that "the Part 90 regulatory structure already facilitates entry by comparably spectrum endowed competitors."^{15/} In rejecting AMTA's request for a sunset period in the underlying proceeding,^{16/} the Commission determined that SMR licensees should not be permitted to use such a provision to ward off new sources of competition.^{17/} AMTA has not set forth any compelling basis for setting aside this reasoning.

^{15/} Id.

^{16/} Report and Order at ¶ 36.

^{17/} Id.

CONCLUSION

For the foregoing reasons, AMTA's Petition should be denied.

Respectfully submitted,

MCCAW CELLULAR COMMUNICATIONS, INC.

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CERTIFICATE OF SERVICE

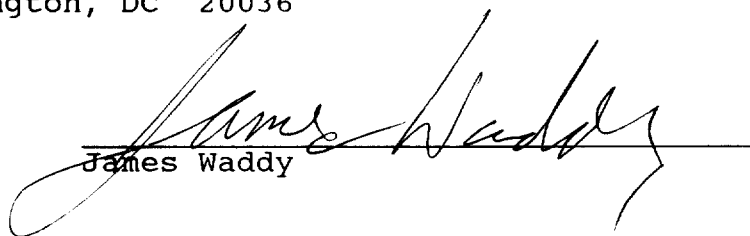
I, James Waddy, hereby certify that on this 24th day of May, 1995, I caused copies of the foregoing Opposition of McCaw Cellular Communications, Inc. to be sent by First Class mail, postage prepaid, or to be delivered by messenger (*) to the following:

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